COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
302 North Office Building
Harrisburg, PA 17120

PEDRO A. CORTÉS
Secretary of the Commonwealth

Telephone:(717) 787-8727
Fax:(717) 787-1734
Website: www.dos.state.pa.us

December 28, 2007

Mr. Howard Van Pelt
President & CEO
Advanced Voting Solutions
1600 Redbud Blvd., Suite 301
McKinney, TX 75069

RE: Advanced Voting Solutions WINware, Version 2.0.4

Dear Mr. Van Pelt:

I am writing regarding recent events relating to the certification process of the Advanced Voting Solutions (AVS) WINware, version 2.0.4 and the impact of that process on the suspended certification of version 2.0.3.

Brian J. Hancock, Director of Testing and Certification, U.S. Election Assistance Commission (EAC), notified you in his letter dated November 19, 2007, that, absent a statement from AVS to the contrary, the EAC would terminate testing of WINware, version 2.0.4, effective November 27, 2007. I am in receipt of a copy of Mr. Hancock's letter of November 28, 2007, in which that application for testing was terminated because of the failure of AVS to respond. Due to this termination, the Commonwealth of Pennsylvania is forced to address the issue of the continued certification of the AVS electronic voting system in the Commonwealth.

Currently, three counties in Pennsylvania have purchased and, until recently, used AVS equipment to run their respective elections. Because AVS will be unable to proceed through federal certification in a timely fashion, enabling the machines to be ready for the Primary Election in April 2008, the Commonwealth must decertify the use of the AVS electronic voting system in Pennsylvania. I will elaborate briefly on why this action must be taken.

First of all, you have been informed repeatedly since September 20 of 2006, that the AVS election management software - WINware, version 2.0.3, which is the version deployed in Pennsylvania - does not fully meet compliance requirements for all elections in Pennsylvania. The Commonwealth had anticipated federal approval of version 2.0.4, which would have enabled us to examine and potentially certify that version for use in time for the Primary Election

in April 2008. Due to time constraints and the EAC's termination of your application it does not appear that this will be possible.

Compounding the time constraints is the fact that during the demonstration of version 2.0.4 in September 2007, the Commonwealth and its examiner identified performance concerns regarding version 2.0.4 and configuration issues demonstrated with AVS. Although you have stated that AVS was only going through testing for a singular fix associated with a problem encountered in Pennsylvania that was never the case. In correspondence with the company, there were several areas to be addressed by the 2.0.4 version update, including the specific change for Pennsylvania.

Again, when the Commonwealth invited AVS to demonstrate version 2.0.4 in September 2007, it was our hope that this would parallel the work done through the EAC's testing program. Unfortunately, this demonstration only served to heighten concerns and raise more questions regarding the system. All of these concerns have been made available to you and the counties. Although version 2.0.4 does seem to fix one of the Commonwealth's problems with the system (i.e. the cross-filing issue), it appears to have created more areas of concern for Pennsylvania's examiners. For example, the election management software has been completely redesigned and did not function properly on either day of the demonstration. Additionally, there were significant concerns regarding configuration management, and to date, Pennsylvania has not received documents requested numerous times over the past year to determine the importance of these concerns. If AVS continued through the federal certification process, many of these concerns would potentially be addressed and fixed; however, the termination of certification at the federal level eliminates that possibility. AVS, the EAC and the three counties in Pennsylvania using this system are fully aware of the concerns the Commonwealth has regarding the use of this system as it is designed now.

To summarize, the Commonwealth of Pennsylvania is not able to maintain certification of this system for the following reasons:

1) Version 2.0.3 (the only system that had been certified in Pennsylvania) does not fully meet compliance requirements for all elections in Pennsylvania.
2) AVS was notified in 2006 that Version 2.0.3 would need to be upgraded and reexamined in order to maintain its certification.
3) To be properly certified in Pennsylvania, a system must first be successfully examined by the appropriate federal testing laboratory.
4) In March, 2007, AVS submitted Version 2.0.4, which was designed to correct the aforesaid compliance issues, to the federal testing process.
5) In July 2007, AVS withdrew Version 2.0.4 from the federal process.
6) On November 28, 2007, the EAC terminated the testing process.

7) Therefore, based on its failure to comply with the federal requirements, AVS has failed to comply with the Commonwealth's requirements and has no system that can be legally used in the Commonwealth.

In conclusion, as a state entity, we must keep the interests of those we serve foremost in our minds. Our primary responsibility rests with the people of Pennsylvania and the counties using this system. We are unable to maintain the certification of version 2.0.3 based not only on the issues that make it non-compliant for certain elections in Pennsylvania, but also with respect to the previously identified performance and configuration issues. Unfortunately, based on the decisions AVS has made over the past year, which resulted in the termination of your application by the EAC, it is manifest that those issues will not be fixed in a timely and efficient manner. The Commonwealth is unable to proceed in any direction other than decertification because of the requirement in our Election Code for federal examination and approval. AVS is free to submit a new system for examination at any time; however, that system must first be examined and approved at the federal level.

Sincerely,

Pedro A. Cortés

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c: Harry VanSickle, Commissioner
Bureau of Commissions, Elections and Legislation
Lackawanna County
Northampton County
Wayne County